

*In the Matter of Michael McKenzie, Fire Captain (PM5066M), New Brunswick*  
CSC Docket No. 2012-74  
**(Civil Service Commission, decided September 21, 2011)**

Michael McKenzie, represented by Craig Gumpel, Esq., appeals his disqualification from the examination for Fire Captain (PM5066M), New Brunswick for possession of a cell phone.

The subject examination was administered on June 16, 2011 to four eligible candidates, and to candidates from other jurisdictions. Mr. McKenzie was disqualified when, after completing his examination, the monitor of the holding room discovered him with a cell phone. The monitor notes that the appellant was sitting and talking with other candidates when he took his phone from his jacket and turned it on to make a call. He told her that he just forgot where he was and wanted to get some information for another candidate regarding some issue unrelated to the examination. The monitor indicated that when she heard a phone, she asked who had it, and the appellant immediately started apologizing for taking out his phone. She asked him to bring her the phone and she consulted with the Center Supervisor, who told the candidate he would get his phone back once everyone was released from the building.

On appeal, Mr. McKenzie explains that he absentmindedly turned on his cell phone while he was in a holding room waiting for other candidates to complete their exams. He states that he inadvertently had his cell phone on him during the examination process, but that he had turned it off and had not made or received any cell phone communications. He argues that he was erroneously disqualified from the examination. In support of this appeal, the Fire Director indicates that the appellant made a grave mistake when he had a lapse of memory and pulled out his mobile phone while in the holding room. The Director indicates that the appellant is a long term member of the Fire Department with no disciplinary record, and is a provisional incumbent in the subject title. The Director states that there are four provisional Fire Captains and only five Fire Lieutenants who are taking the examination, and he asks that the appellant's accomplishments be taken into consideration in this matter.

### **CONCLUSION**

The record establishes that appellant was scheduled to take the subject examination on June 16, 2011. After completing his examination, he was in the holding room when he pulled out a cell phone and started dialing a number. The holding room monitor then confiscated his phone. There is no dispute over whether the candidate had a cell phone, and there were five to ten witnesses in the holding room who saw the cell phone.

The appellant maintains that he was not cheating during the examination and did not use his phone to obtain answers to questions or advance knowledge of questions and answers. In reply, the Civil Service Commission has a duty to ensure the security of the examination process and to provide sanctions for a breach of security. *See N.J.S.A. 11A:4-1(c)*. In order to carry out this statutory mandate, *N.J.A.C. 4A:4-2.10* identifies a number of prohibited actions in the conduct or administration of an examination and provides for the disqualification of candidates participating in such actions. Candidates were informed not to take a cell phone into the examination center on the notices sent regarding the scheduled exam time, and on page 3 of the Orientation Guide, which was the proper time to prevent candidates from bringing cell phones into the center, *prior* to the examination. As such, candidates are informed of this in writing so they may leave their electronic devices at home or in the car. The verbal notices are reminders to those who do not follow these written instructions.

The written notice sent regarding the scheduled exam time stated: Please note that candidates are **NOT PERMITTED** to bring **cell phones, pagers, laptop computers, recording devices, etc.**, into the test center. **Possession of one of these prohibited devices inside of the test center will result in disqualification.** In addition, briefcases and other personal items are also prohibited and must be left outside of the test center. The NJ CSC is not responsible for any personal items.

Page 3 of the Orientation Guide for the second level Fire Captain states:

With the threat of high tech cheating on the rise, possession of personal communication devices such as cell phones, blackberries, pagers/beepers, photographic equipment, MP3 players, or other similar electronic communication devices is strictly prohibited at test centers. **Candidates who are seen or heard with these devices in the test center, even in a power-off mode, will be disqualified and dismissed immediately.**

This information was also repeated in the general orientation guide. They were also informed by monitors when they checked in. The check-in monitor verifies that she reminded the candidates that they were not to have cell phones or any kind of electronic recording device in the building, and they would be disqualified if they were seen with one, even if they had completed the test. She states that she was asked once or twice what should be done with cell phones, and she replied that she did not want to see it and it should be taken out of the building. Further, the hall monitors/escorts were instructed to remind candidates that they are not to possess

cell phones or recording devices, and that if one is located it is grounds for disqualification. The appellant certifies that there were no such verbal announcements. However, it was made clear both in writing and verbally that candidates were not to have cell phones in their possession while in the examination center, and the appellant does not dispute that his exam notice identified that cell phones were banned.

In the matter at hand, the appellant was found in the holding room of the test center with a cell phone. The holding room is part of the test center, and is designed to keep the tested candidates from communicating with untested candidates. It is clear that all candidates for this examination were advised at multiple times that possession of a cell phone in the test center was prohibited and would result in disqualification regardless of whether or not the appellant had finished the examination. The appellant claims that he was not cheating at the test center, and it is uncontested that he was not caught cheating. However, possession of a cell phone at the test center is a potential breach of examination security. This is equally true for oral examinations as for written examinations, as phones have digital voice recording features on them which make it possible to record information during an oral examination for later use. Given the highly advanced features on today's cell phones, which include the ability to take photographs and instant text messaging, possession of these types of devices could seriously undermine examination security. Although the "no cell phone rule" may appear draconian, its importance in ensuring fair and equitable testing for all potential candidates cannot be overemphasized. Test Center personnel are charged with prohibiting the use of unauthorized aids, information or assistance by candidates and preventing examination security material from leaving the exam center.

Anyone found participating in a prohibited action could be disqualified from the exam, rejected for future exams and subject to punishment as provided by law, and possession of a cell phone in the test center is a prohibited action, whether or not the phone is on. When considering the overriding interests of examination security, it is imperative to disqualify candidates who could potentially breach examination security. *See In the Matter of Michele Gordon* (MSB, decided August 9, 2006). The appellant cites various instances wherein the candidates intentionally brought cell phones into centers for various reasons and argues that he did so unintentionally and should not be similarly disqualified. Further, his situation is not the same as that of Mr. Negron's, who was found with a cell phone outside of the center. *See In the Matter of Christian Negron* (MSB, decided March 29, 2007). Nevertheless, other candidates were disqualified for possession of cell phones in the center when they were not aware or had inadvertently brought their phones in. *See In the Matter of Joseph Battista, et al., Fire Fighter (M9999H)* (MSB, decided March 28, 2007).

Carrying a cell phone into an examination center is not appropriate for a participant in a formal examination setting for a public safety title, and the appellant was properly disqualified for possession of a cell phone. The appellant's employment record has no bearing on this matter.

A thorough review of the record indicates that the appellant has failed to support his burden of proof in this matter.

### **ORDER**

Therefore, it is ordered that this appeal be denied.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.